The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY P. MORRISON, DARVIN R. EDWARDS, and LESLIE STARK

Appeal No. 2006-1954
Application No. 10/034,827

ON BRIEF

Before RUGGIERO, BARRY, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants have filed (Sep. 28, 2006) a paper requesting rehearing (37 CFR § 41.52) of our decision entered July 28, 2006, wherein we sustained the rejection of claims 2, 4-10, 12, 15, 17, 18, 20, and 23 under 35 U.S.C. § 102(a) or § 103(a).

Appellants allege, initially, that appellants do not claim priority based upon their provisional application. The allegation seems to relate to our observation, at pages 2 through 3 of the decision, that appellants claim benefit of provisional application 60/258,528, filed December 28, 2000. According to this record, however, appellants do claim priority based upon their provisional application. Appellants' specification states on the first page, as amended by appellants on January 3, 2002, that "[t]his application claims priority under 35 U.S.C. § 119 based upon **Provisional Patent Application number 60/258,525 filed 12/28/2000.**" As we further noted in our decision, however, the examiner has determined that the instant application is not entitled to the benefit of the earlier filing date under 35 U.S.C. § 119(e)(1) because the instant nonprovisional application was filed later than 12 months after the date on which the provisional application was filed.

The remainder of appellants' remarks in the rehearing request do not state with particularity the points believed to have been misapprehended or overlooked by the Board. We consider the remarks as merely repeating or holding to the arguments that we found to be unpersuasive in the briefs and that we addressed in our decision. Appellants' remarks in the request for rehearing do not persuade us of error in our original decision. We thus remain convinced that our decision to affirm the rejection of the claims for the reasons expressed in our decision is correct.

CONCLUSION

In view of the foregoing, we have granted appellants' request to the extent that we have reconsidered our decision mailed July 28, 2006. However, we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv).

DENIED

JOSEPH F. RUGGIERO)
Administrative Patent Judge)
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) BOARD OF PATENT
LANCE LEONARD BARRY) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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HOWARD B. BLANKENSHIP)
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